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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,152	10/27/2000	Chisa Hayakawa	01165.0799	1720

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EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/14/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/674,152

Applicant(s)

HAYAKAWA ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment A has been filed on December 19, 2003 as Paper No. 5. Claims 3 and 7-10 have been amended. Claims 1, 2, and 4-6 have been cancelled. The amended claims are sufficient to overcome the claim objections set forth in section 2 and the 35 USC 112 and 102 rejections set forth in sections 4, 6, and 7 of the last Office Action.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 3, 7, and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Hayakawa et al. (JP 9-273,085).

The '085 Patent discloses the same thing as the present invention (see claims). With regard to claim 10, Hayakawa et al. disclose using W-shaped fibers (paragraph 15).

Claim Rejections - 35 USC § 102/103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hayakawa et al.

Although Hayakawa et al. does not explicitly teach the property limitations set forth in claim 9; it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. similar pigmented fibers and similar water absorption fibers) and in the similar production steps (i.e. two layer woven or knitted fabrics) used to produce the composite fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

6. Claims 3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moretz et al. (U.S. Patent No. 5,269,720) in view of Mouri et al. (U.S. Patent No. 5,690,922).

Moretz et al. disclose a stretch fabric comprising stretch yarns with a moisture transport fabric layer and a moisture dispersal fabric layer (Abstract). Moretz et al. do

not disclose adding a white pigment. However, white pigment, such as titanium oxide, is so commonly added to fabric material. Mouri et al. disclose adding titanium oxide to fiber in an amount of 0.1 to 25% by weight in order to create a deodorizing effect (Abstract). It would have been obvious to one having ordinary skill in the art to add titanium oxide to the fibers of Moretz et al. in order to allow the fibers to have a deodorizing effect, as taught by Mouri et al. With regard to claim 8, Moretz et al. disclose adding stretch yarns into the fabric (column 3, line 52). With regard to claim 9, Moretz et al. do not disclose the claimed properties. If not inherent to the material of Moretz, It would have been obvious to one having ordinary skill in the art to optimize the composite fabric of Moretz et al. in order to obtain the desired density and water retention ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moretz et al. in view of Mouri et al. as applied to claim 3 above, and further in view of Unitika (JP 61-231,274 (English Abstract Provided)).

Moretz et al. do not provide W-shaped cross section fibers in the wicking layer, but do desire the fibers in that layer to have a high surface area in relation to volume (column 3, lines 19-20). The '274 Patent teaches W-shaped cross-section fibers are commonly used in woven fabrics of polyester (Abstract). It would have been obvious to one having ordinary skill in the art to use W-shaped cross-section fibers in the wicking

layer of Moretz et al., in order to provide a means to obtain the desired high surface are in relation to volume desired by Moretz et al.

Response to Arguments

8. Applicant's arguments with respect to claim 3 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant argues that the Hayakawa et al. reference is not valid 102(a) art because it is to the same Applicants as the present invention. However, the invention of the present invention has three different Applicants, whereas the '085 Japanese reference only has two Applicants. Therefore, there is a different inventive entity between the Japanese Patent and the present application and the Japanese Patent is valid prior art under 102(a).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771


ELIZABETH M. COLE
PRIMARY EXAMINER

February 5, 2003